

Pamela A. McKay (SBN 7812)
MCKAY LAW FIRM, CHTD.
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Las Vegas, NV 89134
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Attorneys for Defendant
ATAIN SPECIALTY INSURANCE COMPANY
erroneously named ATAIN INSURANCE COMPANIES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

| | | |
|---------------------------------------|---|--------------------------|
| COLONY NATIONAL INSURANCE COMPANY, |) | CASE NO. |
| |) | |
| Plaintiff, |) | <u>NOTICE OF REMOVAL</u> |
| |) | |
| vs. |) | |
| |) | |
| ATAIN INSURANCE COMPANIES; and |) | |
| DOES 1 through 20, inclusive, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Defendant ATAIN SPECIALTY INSURANCE COMPANY, erroneously named ATAIN INSURANCE COMPANIES, notices the removal of this action to the United States District Court, and, in support thereof, states as follows:

1. ATAIN SPECIALTY INSURANCE COMPANY is the defendant in the above-entitled action commenced in the 8th Judicial District Court, in and for Clark County, Nevada, and is now pending in that court.

2. Service of summons and complaint upon ATAIN SPECIALTY INSURANCE COMPANY was made by Plaintiff serving the Department of Business and Industry, Division of Insurance for the State of Nevada on December 27, 2017, pursuant to NRS 680A.260 and NRS 685A.200.

1 3. No further proceedings have been had in this matter in the 8th Judicial District Court.

2 4. ATAIN SPECIALTY INSURANCE COMPANY is and was at the time this action was
3 commenced a corporation incorporated in the State of Michigan with its principal place of
4 business in the State of Michigan. Plaintiff does not allege the state in which it is incorporated or
5 the location of its principal place of business. ATAIN SPECIALTY INSURANCE COMPANY
6 is informed and believes and thereon alleges that Plaintiff is not a Michigan corporation and does
7 not maintain its principal place of business in the State of Michigan. There is now and there was
8 at the time of the commencement of this action complete diversity between plaintiff and
9 defendant.

10 5. Does 1 through 20 are named and sued fictitiously and their citizenship is disregarded as
11 a matter of law for purposes of removal on grounds of diversity jurisdiction.

12 6. The complaint alleges claims for equitable contribution and declaratory relief in a sum in
13 excess of the minimum jurisdiction of the court; specifically, in excess of \$1,000,000 (One
14 Million Dollars).

15 7. The sum of equitable contribution sought by Plaintiff exceeds \$75,000, exclusive of
16 interest and costs, based on the express allegations of the complaint stating the alleged sums
17 sought are in excess of \$1,000,000 (One Million Dollars).

18 8. This Court has original jurisdiction over the subject matter of this action under the
19 provisions of Section 1332 of Title 28 of the United States Code in that there is complete
20 diversity between the parties and more than \$75,000 in controversy exclusive of interest and
21 costs. Pursuant to Section 1441 of Title 28 of the United States Code, ATAIN SPECIALTY
22 INSURANCE COMPANY is therefore entitled to remove this action to this Court.

23 9. Thirty days have not elapsed since defendant was served with the summons and
24 complaint in this action. Copies of the summons and complaint are attached hereto and marked
25 respectively as Exhibits A and B, constituting all of the papers and pleadings served on ATAIN
26 SPECIALTY INSURANCE COMPANY.

27 10. A true and correct copy of this Notice of Removal is being filed this date with the Clerk
28 of the 8th Judicial District Court of the State of Nevada.

1 Based on the foregoing, ATAIN SPECIALTY INSURANCE COMPANY removes the above
2 action now pending in the 8th Judicial District Court of the State of Nevada, as Case No. A-17-
3 765604-C, to this Court.

4 MCKAY LAW FIRM, CHTD.

5 /s/ *Pamela McKay*

6 DATED: January 11, 2018

By:

7 Pamela A. McKay (SBN 007812)
8 9320 Sun City Blvd., Suite 104
9 Las Vegas, NV 89134
10 Telephone: (702) 835-6956
11 Facsimile: (702) 835-6957

12 Attorneys for Defendant
13 ATAIN SPECIALTY INSURANCE COMPANY
14 erroneously named ATAIN INSURANCE
15 COMPANIES
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CERTIFICATE OF SERVICE

Colony National Insurance Company v. Atain Insurance Companies
 United States District Court, D. Nev., Case No. [TBD]

I certify that I am an employee of McKay Law Firm, Chtd., and that pursuant to LR 5-4, on January 11, 2018, I served a true and correct copy of the foregoing NOTICE OF REMOVAL via CM/ECF and by First Class U.S. Mail to the parties and to their counsel identified below:

| <u>ATTORNEY OF RECORD</u> | <u>PARTY</u> |
|--|--|
| Trelawney Kitchen LAW OFFICES OF SEMHA ALWAYA, APC 2000 Powell Street, Ste. 125 Emeryville, CA 94608 and L. Kristopher Rath Cynthia G. Milanowski HUTCHISON & STEFFEN, PLLC 10080 W. Alta Drive, Ste. 200 Las Vegas, NV 89145 | Plaintiff COLONY NATIONAL INSURANCE COMPANY |

/s/ Pamela McKay

 Pamela A. McKay
 MCKAY LAW FIRM CHTD.

EXHIBIT A

Electronically Issued

12/6/2017 5:22 PM

DEC 27 2017

1 **SUMM**

Trelawney Kitchen (10374)

2 **LAW OFFICES OF SEMHA ALWAYA, APC**

2000 Powell Street, Suite 125

3 Emeryville, California 94608

Phone: (510) 595-7900

4 Facsimile: (510) 595-9049

Email: tjkitchen@alwayalaw.com5 **AND**

L. Kristopher Rath (5749)

6 Cynthia G. Milanowski (5652)

HUTCHISON & STEFFEN, PLLC

7 Peccole Professional Park

10080 W. Alta Drive, Suite 200

8 Las Vegas, Nevada 89145

Telephone: (702) 385-2500

9 Facsimile: (702) 385-2086

Email: Krath@hutchlegal.com10 Email: cmilanowski@hutchlegal.com

11 Attorneys for Plaintiff

COLONY NATIONAL INSURANCE COMPANY

12

13

EIGHTH JUDICIAL DISTRICT COURT

14

CLARK COUNTY, NEVADA

15

**COLONY NATIONAL INSURANCE
COMPANY,**

Case No. A-17-765604-C

16

Dept. No 28

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Plaintiff,

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vs.

SUMMONS**Atain Insurance Companies**

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ATAIN INSURANCE COMPANIES; and

20

DOES 1 through 20, inclusive,

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Defendants

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NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU

23

**WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS, READ THE
INFORMATION BELOW.**

24

TO THE DEFENDANT(S): A civil Complaint has been filed against you by Plaintiff against
you for the relief set forth in the Complaint.

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1. If you intend to defend this lawsuit, within 20 days after this Summons is served

28

on you, exclusive of the day of service, you must do the following:

1 (a) File with the Clerk of this Court, whose address is shown below, a formal written response
2 to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

3 (b) Serve a copy of your response upon the attorney whose name and address is shown below.

4 2. Unless you respond, your default will be entered upon application of the Plaintiff and
5 failure to so respond will result in a judgment of default against you for the relief demanded in the
6 Complaint, which could result in the taking of money or property or other relief requested in the
7 Complaint.
8 Complaint.

9 3. If you intend to seek the advice of an attorney in this matter, you should do so
10 promptly so that your response may be filed on time.

11 4. The State of Nevada, its political subdivisions, agencies, officers, employees,
12 board members, commission members and legislators each have 45 days after service of this
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1 Summons within which to file an Answer or other responsive pleading to the Complaint.


2 DATED December 6, 2017.

3 STEVEN D. GRIERSON, CLERK OF COURT

4 12/6/2017

5
6 Deputy Clerk, Date:
7 Regional Justice Center
8 200 Lewis Ave.
Las Vegas, NV 89155

9 Submitted by:

10 
11 Trelawney Kitchen
12 LAW OFFICES OF SEMHA ALWAYA, APC
13 2000 Powell Street, Suite 125
Emeryville, California 94608

14 And

15 L. Kristopher Rath
16 Cynthia G. Milanowski
HUTCHISON & STEFFEN, PLLC
17 10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145

18 *Attorney for Plaintiff*
COLONY NATIONAL INSURANCE COMPANY

BRIAN SANDOVAL
Governor

STATE OF NEVADA

C.J. MANTHE
Director

BARBARA D. RICHARDSON
Commissioner



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

3300 West Sahara Avenue, Suite 275
Las Vegas, Nevada 89102-3200
(702) 486-4009 • Fax (702) 486-4007
Website: doi.nv.gov
E-mail: insinfo@doi.nv.gov

December 28, 2017

Atain Insurance Company
Attn: Emmanuel Manuelidis
30833 Northwestern Highway
Farmington Hills, MI 48334

RE: Colony National Insurance Company vs. Atain Insurance Companies, et al.
District Court, Clark County, Nevada
Case No. A-17-765604-C

Dear Mr. Manuelidis:

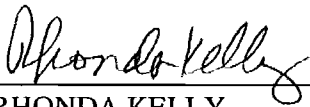
Enclosed please find the following documents: Summons and Complaint. These documents have been served upon the Commissioner of Insurance as your attorney for service of process on December 27, 2017.

The appropriate action should be taken immediately, as you may only have 30 days from the date of this service to respond.

If you have any questions regarding this service, please advise.

Sincerely,

BARBARA D. RICHARDSON
Commissioner of Insurance

By: 
RHONDA KELLY
Service of Process Clerk

Enclosures

c: Cynthia G. Milanowski, Esq.


PROOF OF SERVICE

I hereby declare that on this day I served a copy of the Summons and Complaint upon the following defendant in the within matter, by shipping a copy thereof, via Certified mail, return receipt requested, to the following:

Atain Insurance Company
Attn: Emmanuel Manuelidis
30833 Northwestern Highway
Farmington Hills, MI 48334
CERTIFIED MAIL NO. 7016 3010 0000 0484 2031

I declare, under penalty of perjury, that the foregoing is true and correct.


DATED this 28th day of December, 2017.


RHONDA KELLY
Employee of the State of Nevada
Department of Business and Industry
Division of Insurance

RE: Colony National Insurance Company vs. Atain Insurance Companies, et al.
District Court, Clark County, Nevada
Case No. A-17-765604-C



State of Nevada, Division of Insurance
This document on which this certificate
is stamped is a full, true and correct
copy of the original.

Date: 12/28/17 By: 

BRIAN SANDOVAL
Governor

STATE OF NEVADA

C.J. MANTHE
Director

BARBARA D. RICHARDSON
Commissioner



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

3300 West Sahara Avenue, Suite 275
Las Vegas, Nevada 89102-3200
(702) 486-4009 • Fax (702) 486-4007
Website: doi.nv.gov
E-mail: insinfo@doi.nv.gov

December 28, 2017

Cynthia G. Milanowski, Esq.
HUTCHISON & STEFFEN, PLLC
10080 W. Alta Dr., Ste. 200
Las Vegas, NV 89145

RE: Colony National Insurance Company vs. Atain Insurance Companies, et al.
District Court, Clark County, Nevada
Case No. A-17-765604-C

Dear Ms. Milanowski:

The Division received the service of process documents on December 27, 2017, regarding the above-entitled matter. Service has been completed on Atain Insurance Company this date and enclosed are the following:

1. A copy of our letter to Atain Insurance Company dated December 28, 2017;
2. A certified copy of the Proof of Service dated December 28, 2017; and
3. Your receipt in the amount of \$30.00.

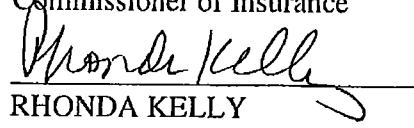
Pursuant to *Nevada Revised Statutes (NRS)* 680A.260, 685A.200, and 685B.050, all documents after initial service of process may be served directly to the party.

If you have any questions regarding this service, please so advise.

Sincerely,

BARBARA D. RICHARDSON
Commissioner of Insurance

By:

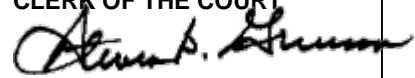

RHONDA KELLY
Service of Process Clerk

Enclosures

c: Atain Insurance Company

EXHIBIT B

Electronically Filed
12/4/2017 5:01 PM
Steven D. Grierson
CLERK OF THE COURT


COMP

Trelawney Kitchen (10374)
LAW OFFICES OF SEMHA ALWAYA, APC
2000 Powell Street, Suite 125
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AND

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Cynthia G. Milanowski (5652)
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
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Telephone: (702) 385-2500
Facsimile: (702) 385-2086
Email: Krath@hutchlegal.com
Email: cmilanowski@hutchlegal.com

Attorneys for Plaintiff
COLONY NATIONAL INSURANCE COMPANY

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

COLONY NATIONAL INSURANCE
COMPANY,

Plaintiff,

vs.

ATAIN INSURANCE COMPANIES; and
DOES 1 through 20, inclusive,

Defendants

Case No. A-17-765604-C

Dept. Department 28

**COLONY NATIONAL INSURANCE
COMPANY'S COMPLAINT FOR
EQUITABLE CONTRIBUTION,
EQUITABLE INDEMNITY AND
DECLARATORY RELIEF**

EXEMPT FROM ARBITRATION:

DECLARATORY RELIEF REQUESTED

Plaintiff COLONY NATIONAL INSURANCE COMPANY ("Colony") hereby complains
against Defendants ATAIN INSURANCE COMPANIES ("Atain"); and DOES 1 through 10, inclusive
and each of them.

1 PARTIES

2 1. Plaintiff Colony is a corporation licensed to do business and doing business at all relevant
3 times herein as a liability insurer in the State of Nevada.

4 2. Colony alleges on information and belief that Atain is a corporation licensed to do business and
5 doing business at all relevant times herein as a liability insurer in the State of Nevada.

6 3. Colony alleges on information and belief that DOES 1 through 20 are insurers licensed to do
7 business and doing business in the State of Nevada who also owe defense and/or indemnity to Quality
8 Wood Product, Ltd. ("Quality") and the additional insureds covered under their policies for the lawsuits
9 listed below, but have failed and/or refused to provide a defense and/or indemnify Quality and/or any
10 additional insureds covered under their policies. The true names and capacities, whether individual,
11 corporate, associate or otherwise, of the Defendants named herein as DOES 1 through 20 are unknown
12 to Colony at this time; and for that reason, Colony sues Doe Defendants by fictitious names. Colony will
13 seek leave to amend this Complaint to allege the true names and capacities of said Doe Defendants when
14 they have been ascertained.

15 JURISDICTION AND VENUE

16 4. This action for declaratory relief, equitable contribution, and equitable indemnity is brought
17 pursuant to NRCP 57 and NRS Chapter 30, and the common law. This Court has jurisdiction over this
18 action as all Defendants are, and were at all relevant times, doing business in the State of Nevada
19 including, without limitation, conducting business as insurers in the State of Nevada.

20 5. The acts and/or omissions at issue in this litigation took place in this judicial district within the
21 State of Nevada. The Actions listed below are pending in this judicial district. Venue, therefore, lies with
22 this Court, as a substantial part of the events which are the subject of the claims asserted herein are
23 located and/or took place in this judicial district.

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THE ACTIONS

6. Colony sues Atain for their refusal to defend and indemnify their named insured, Quality, and the additional insureds covered under each of their policies as they relate to defense and settlement of the following underlying actions:

- *Aaronson et al. v. U.S. Home Corporation, et al.* Clark County, District Court of Nevada Case No.: A-12-669867-D
- *Amedemegnah, et al. v. U.S. Home Corporation, et al.; Saddle Ridge II Claimants v. U.S. Home Corporation, et al.* Clark County District Court Case No.: A-16-732225-D
- *Aton, et al. v. Horton, Inc., et al.*, Clark County District Court Case No.: A732221
- *Attaway v. D.R. Horton, Inc.* Clark County District Court Case No.: A-14-711032-D
- *Azure Manor/Rancho De Paz HOA. v. D.R. Horton, Inc.* Clark County, District Court of Nevada Case No.: A-14-710406-D
- *Beckmann, et al. v. D.R. Horton, Inc.* District Court of Nevada, Clark County Case No.: A-14-740444-D
- *Chamelian, et al. v. US Home Corp, et al.* Clark County, District Court of Nevada Case No.: A-16-732230-D
- *Corpuz v. Centex Homes*, Clark County District Court, Chapter 40
- *Frey, et al. v. D.R. Horton, Inc., et al* Clark County, District Court of Nevada Case No.: A-14-711601-D
- *Heck, et al. v. D.R. Horton, Inc., et al.* Clark County, District Court of Nevada Case No.: A-16-732295-D
- *High Noon @ Arlington Ranch HOA v. Horton, Inc., et al.* Clark County, District Court of Nevada Case No.: A-542616
- *Jackson (Riverwalk) v. D.R. Horton, Inc.*, Clark County District Court Case No.: A745312
- *JFB Trust, et. al. v D.R. Horton, Inc.* Clark County, District Court of Nevada Case No.: A-16 732223-D
- *Knox/Henning, et al. v. D.R. Horton, Inc., et al.* Clark County, District Court of Nevada Case No.: A-15-714624-D
- *Lopez, et al. v. US Home Corporation, et al.* Clark County, District Court of Nevada Case No. 2:16 CV-01754-GMV-CWH
- *Medina, et al. v. US Home Corporation, et al.* Clark County, District Court of Nevada Case No.: A-12-668349-D

- *Munsell et al. v. Beazer Homes Holdings Corp* Clark County, District Court of Nevada Case No.: A-12-661755-D
- *Nguyen v. D. R. Horton, Inc. (Arlington Estates)*, Clark County District Court Case No.: A-16-732129-D
- *Paradise Court HOA v. D.R. Horton* District Court, Clark County, Nevada Case No. A-16-1731709-C
- *Raubolt v. US Home Corporation, et al.* Clark County District Court Case No.: A-15-727599-D
- *Reynard, et al. v. US Home Corp, et al.; Chamelian, et al. v. US Home Corp, et al.* A-15-713588-D

The above listed claims will be collectively referred to as "Actions".

POLICIES

7. Colony issued to Quality two Commercial General Liability Insurance Policies, Policy No. AR5360488, effective May 15, 2007 to February 20, 2008 and Policy No AR53602488A, effective February 20, 2008 to February 20, 2009 (the "Colony Policies").

8. On information and belief, Atain issued to Colony a Commercial General Liability Insurance to Quality, Policy No. PRB1273 effective February 20, 2006 to February 20, 2007 (the "Atain Policy").

9. On information and belief, the Atain Policy at issue provides coverage for sums the insured is obligated to pay because of "bodily injury" or "property damage" caused by an "occurrence" in which "property damage" means "physical injury to tangible property, including all resulting loss of use of that property" and "occurrence" means "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." On information and belief Colony's policies and Defendants' policies listed above contain additional insured endorsements applicable to the above referenced Actions.

DEFENSE AND INDEMNITY OF QUALITY

10. The above Actions were tendered to Colony and Defendants for defense and indemnity. Colony agreed to defend Quality under the Colony Policies subject to a comprehensive reservation of rights letter.

11. On information and belief, Atain refused to provide a defense to Quality in all of the Actions.

12. On information and belief, Colony asserts that Defendants wrongfully refused to and continue to wrongfully refuse to pay the defense and indemnity on behalf of Quality under their respective policies.

13. Each one of the Actions cited above involves construction defect claims allegedly arising out of Quality's work. Each Complaint in the above referenced Action alleges that the damages to the Properties occurred at various times, thereby triggering a defense obligation under the Atain Policy and the Doe Defendants' policies issued to Quality.

14. Colony has incurred in excess of \$450,000 in defense of Quality. Colony has incurred in excess of \$400,000 in settlement of claims on behalf of Quality.

DEFENSE OF ADDITIONAL INSURED

15. The above Actions were tendered to Colony and Atain for defense and indemnity under Atain's policies. Colony agreed to defend some but not all of the additional insured defendants in the Actions subject to a comprehensive reservation of rights letter.

16. On information and belief, Atain and the Doe Defendants refused to provide a defense to any additional insureds in most, if not all, cases.

17. On information and belief, Colony asserts that Atain and the Doe Defendants wrongfully refused to and continue to wrongfully refuse to pay defense and indemnity on behalf of the additional insureds covered under their respective policies.

18. Each one of the Actions cited above involves construction defect claims allegedly arising out of Quality's work. Each Complaint in the underlying actions alleges that the damages to the Properties occurred at various times, thereby triggering a defense obligation under each of the Defendants' respective policies.

19. To date, Colony has paid in excess of \$600,000 in defense of the additional insureds.

FIRST CAUSE OF ACTION FOR EQUITABLE CONTRIBUTION AS TO DUTY TO DEFEND QUALITY

20. Colony reinstates and incorporates by reference the allegations contained in the prior paragraphs of this Complaint as though fully set forth herein.

21. Colony has incurred and continues to incur substantial monetary sums defending Quality in the above listed Actions.

22. Colony asserts and contends that Quality was insured under Defendants' Policies. Pursuant to the express and implied terms, conditions and provisions of Atain's Policies, Atain and the Doe Defendants were obligated to defend Quality against the claims, allegations, actions and/or demands made against Quality in the above referenced Actions.

23. Colony asserts and contends that Atain and the doe Defendants wrongfully refused to defend Quality against the claims, allegations, actions and/or demands made against Quality in the above referenced Actions under their respective policies and continue to wrongfully refuse to defend Quality.

24. Accordingly, under the law and doctrine of equitable contribution, Colony is entitled to contribution from Atain and the Doe Defendants for their equitable share of the sums expended by Colony to defend Quality against the claims, allegations, actions and/or demands made against Quality in the Actions.

25. Colony asserts and contends that Atain and the Doe Defendants are obligated to reimburse Colony for its proportionate or equitable share of the sums expended by Colony to defend Quality against the claims, allegations, actions and/or demands made against Quality in the above Actions.

26. By reason of the wrongful refusal of Atain and the Doe Defendants to defend Quality against the claims, allegations, actions and/or demands made to or against Quality in the above referenced Actions, Atain and the Doe Defendants have damaged Colony and are liable to Colony for its proportionate or equitable share of the monetary sums expended by Colony to defend Quality against the claims, allegations, actions and/or demands made against Quality in the above referenced Actions, or alternatively, for Atain and the Doe Defenants' proportionate or equitable share of those monetary sums.

WHEREFORE, Colony prays for judgment as hereinafter set forth.

**SECOND CAUSE OF ACTION FOR EQUITABLE CONTRIBUTION AS TO DUTY
TO INDEMNIFY QUALITY**

27. Colony reinstates and incorporates by reference the allegations contained in the prior paragraphs of this Complaint as though fully set forth herein.

28. Colony incurred and/or will incur substantial monetary sums indemnifying against the claims, allegations, actions and/or demands made to and/or against Quality in the above referenced Actions.

28. Colony asserts and contends that Quality was insured under one or more of Defendants' Policies issued. Pursuant to the express and implied terms, conditions and provisions of Defendants' Policies, Defendants are to fully indemnify Quality against the claims, allegations, actions and/or demands made to and/or against Quality in the above referenced Actions.

29. Colony asserts and contends that Defendants wrongfully refused and/or failed to fully indemnify Quality under Defendants' Policies against the claims, allegations, actions and/or demands made against Quality in the above referenced Actions.

30. Accordingly, under the law and doctrine of equitable contribution, Colony is entitled to contribution from Defendants for their equitable share of sums that has been expended and will be expended by Colony to indemnify Quality against the claims, allegations, actions and/or demands made against Quality in the Actions.

31. Colony asserts and contends that Defendants are obligated to contribute its proportionate or equitable share of the sums expended by Colony to indemnify Quality against the claims, allegations, actions and/or demands made against Quality in the Actions.

32. By reason of Defendants' failure to indemnify Quality against the claims, allegations, actions and/or demands made against Quality in the above referenced Actions, Defendants have damaged Colony and are liable to Colony for its proportionate share of the monetary sums expended by Colony to fully indemnify Quality against the claims, allegations, actions and/or demands made against Quality in the Actions.

WHEREFORE, Colony prays for judgment as hereinafter set forth.

THIRD CAUSE OF ACTION FOR EQUITABLE CONTRIBUTION
AS TO DUTY TO DEFEND ADDITIONAL INSURED

33. Colony reinstates and incorporates by reference the allegations contained in the prior paragraphs of this Complaint as though fully set forth herein.

34. Colony has incurred and continues to incur substantial monetary sums defending some of the additional insureds in the above referenced Actions.

35. Colony asserts and contends that the additional insureds were insured under Defendants' Policies. Pursuant to the express and implied terms, conditions and provisions of Defendants Policies, Defendants as obligated to defend the additional insureds against the claims, allegations, actions and/or demands made against the additional insureds in the above referenced Actions.

36. Colony asserts and contends that Defendants wrongfully refused to defend the additional insureds against the claims, allegations, actions and/or demands made against the additional insureds in the above referenced Actions under the their respective policies and continue to wrongfully refuse to defend Quality.

37. Accordingly, under the law and doctrine of equitable contribution, Colony is entitled to contribution from Defendants for its equitable share of the sums expended or to be expended by Colony to defend the additional insureds against the claims, allegations, actions and/or demands made against the additional insureds in the above referenced Actions.

38. Colony asserts and contends that Defendants are obligated to reimburse Colony for their proportionate or equitable shares of the sums expended by Colony to defend the additional insureds against the claims, allegations, actions and/or demands made against the additional insureds in the above referenced Actions.

39. By reason of Defendants' wrongful refusal to defend the additional insureds against the claims, allegations, actions and/or demands made to or against the additional insureds in the above referenced Actions, Defendants have damaged Colony and are liable to Colony for Defendants' proportionate or equitable share of those monetary sums expended by Colony to defend the additional insureds against the claims, allegations, actions and/or demands made against the additional insureds in

the above referenced Actions, or alternatively, for Defendants' proportionate or equitable share of those monetary sums.

WHEREFORE, Colony prays for judgment as hereinafter set forth.

FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF
AS TO DUTY TO DEFEND QUALITY

40. Colony reinstates and incorporates by reference the allegations contained in the prior paragraphs of this Complaint as though fully set forth herein.

41. Quality's defense against the claims, allegations, actions and demands alleged against Quality in the above referenced Actions were tendered to Atain and the Doe Defendants. It was requested that Atain and the Doe Defendants defend Quality pursuant to its obligations under their Policies. Atain and the Doe Defendants wrongfully refused to defend Quality, and wrongfully continue to refuse to defend Quality in the above referenced Actions under one or more of their policies.

42. Colony has sustained substantial pecuniary loss defending Quality against the claims, actions and demands alleged against Quality in the above referenced Actions.

43. An actual, present and justiciable controversy has arisen and now exists between Colony and Atain, as well as the Doe Defendants, concerning each insurance carrier's respective rights, duties and obligations under their respective policies as follows:

- i. Colony asserts and contends that pursuant to the express and implied terms, conditions and provisions of their policies, Atain and the Doe Defendants are and were required and obligated to defend Quality against the claims, allegations, demands and causes of action alleged against them in the above referenced Actions. Colony is informed and, based thereon, alleges that Atain and the Doe Defendants have failed to defend Quality against the claims, allegations, demands and causes of action alleged against Quality in the above referenced Actions; and

1 ii. Colony is informed and believes, and based thereon alleges,
2 that Atain and the Doe Defendants deny that they have or
3 had any defense obligation to Quality under one or more of
4 their policies concerning the claims, allegations, demands
5 and causes of action alleged against Quality in the above
6 referenced Actions.

7 44. Colony asserts and contends that a declaratory judgment is both necessary and proper
8 at this time for the court to determine the respective rights and liabilities of Colony and
9 Defendants regarding their respective obligations to defend Quality against the claims, allegations,
10 demands and causes of action alleged against Quality in the above referenced Actions.

11 45. An actual, present and justiciable controversy has arisen between Colony and
12 Defendants regarding their respective defense obligations and duties, if any, owed to Quality under one
13 or more of their policies, and to each other, with respect to the Actions.

14 46. By reason of the foregoing, a declaratory judgment is both necessary and proper at this
15 time in order for Colony and Defendants to determine their respective rights, duties and obligations, if
16 any, owed to Quality, and to each other, pursuant to the express and implied terms, conditions and
17 provisions of their respective policies.

18 **WHEREFORE**, Colony prays for judgment as hereinafter set forth.

19 **FIFTH CAUSE OF ACTION FOR DECLARATORY RELIEF AS TO DUTY TO**
20 **INDEMNIFY QUALITY**

21 47. Colony reinstates and incorporates by reference the allegations contained in the prior
22 paragraphs of this Complaint as though fully set forth herein.

23 48. Quality's defense against the claims, allegations, actions and demands alleged against
24 Quality in the above referenced Actions were tendered to Defendants. It was requested that Defendants
25 defend and indemnify Quality pursuant to their obligations under one more of the policies issued by
26 them to Quality. Defendants have refused to indemnify Quality in the above referenced Actions under
27 one or more of Defendants' Policies, respectively.
28

1 49. An actual, present and justiciable controversy has arisen and now exists between
2 Colony and Defendants concerning each insurance carrier's respective rights, duties and obligations
3 under their respective policies as follows:

4 i. Colony asserts and contends that pursuant to the express
5 and implied terms, conditions and provisions of their
6 policies, Defendants are required and obligated to
7 indemnify Quality against the claims, allegations, demands
8 and causes of action alleged against them in the Actions.

9 Colony is informed and, based thereon, alleges that based
10 on Defendants' present denial of a defense under one or
11 more of their respective policies, Defendants will fail to
12 indemnify Quality against the claims, allegations, demands
13 and causes of action alleged against Quality in the Actions;
14 and

15 ii. Colony is informed and believes, and based thereon alleges,
16 that Defendants deny that they have or had any defense or
17 indemnity obligation to Quality under one or more of their
18 respective policies concerning the claims, allegations,
19 demands and causes of action alleged against Quality in the
20 Actions.

21 50. Colony has sustained and will sustain substantial pecuniary loss indemnifying Quality
22 against the claims, actions and demands alleged against Quality in the above referenced Actions.

23 51. Colony asserts and contends that a declaratory judgment is both necessary and proper
24 at this time for the court to determine the respective rights and liabilities of Colony and Defendants
25 regarding their respective obligations to indemnify Quality against the claims, allegations, demands and
26 causes of action alleged against Quality in the Actions.

52. An actual, present and justiciable controversy has arisen between Colony and Defendants regarding their respective indemnity obligations and duties, if any, owed to Quality and to each other with respect to the Actions.

53. By reason of the foregoing, a declaratory judgment is both necessary and proper at this time in order for Colony and Defendants to determine their respective rights, duties and obligations, if any, owed to Quality and to each other, pursuant to the express and implied terms, conditions and provisions of their respective policies.

WHEREFORE, Colony prays for judgment as hereinafter set forth.

SIXTH CAUSE OF ACTION FOR DECLARATORY RELIEF
AS TO DUTY TO DEFEND ADDITIONAL INSURED

54. Colony reinstates and incorporates by reference the allegations contained in the prior paragraphs of this Complaint as though fully set forth herein.

55. Additional Insured's defense against the claims, allegations, actions and demands alleged against them in the above referenced Actions was tendered to Colony and Defendants. It was requested that Colony and Defendants defend the additional insureds pursuant to their obligations under their Policies. Colony accepted the defense of the additional insured subject to a complete reservation of rights. Defendants, and each of them, wrongfully refused to defend the additional insureds, and wrongfully continue to refuse to defend the additional insureds in the above referenced Actions under one or more of their policies.

56. Colony has sustained substantial pecuniary loss defending the additional insureds against the claims, actions and demands alleged against the additional insureds in the Actions.

57. An actual, present and justiciable controversy has arisen and now exists between Colony and Defendants concerning each insurance carrier's respective rights, duties and obligations under their respective policies as follows:

- i. Colony asserts and contends that pursuant to the express and implied terms, conditions and provisions of their policies, Defendants are and were required and obligated to defend the additional insureds against the claims,

1 allegations, demands and causes of action alleged against
2 them in the above referenced Actions. Colony is informed
3 and, based thereon, alleges that Defendants have failed to
4 defend the additional insureds against the claims,
5 allegations, demands and causes of action alleged against
6 the additional insureds in the Actions; and

7 ii. Colony is informed and believes, and based thereon alleges,
8 that Defendants deny that they have or had any defense
9 obligation to the additional insureds under one or more of
10 their policies concerning the claims, allegations, demands
11 and causes of action alleged against the Additional Insureds
12 in the Actions.

13 58. Colony asserts and contends that a declaratory judgment is both necessary and proper
14 at this time for the court to determine the respective rights and liabilities of Colony and Defendants
15 regarding their respective obligations to defend the Additional Insureds against the claims, allegations,
16 demands and causes of action alleged against the Additional Insureds in the Actions.

17 59. An actual, present and justiciable controversy has arisen between Colony and
18 Defendants regarding their respective defense obligations and duties, if any, owed to the Additional
19 Insureds under one or more of their policies, and to each other, with respect to the above referenced
20 Actions.

21 60. By reason of the foregoing, a declaratory judgment is both necessary and proper at this
22 time in order for Colony and Defendants to determine their respective rights, duties and obligations, if
23 any, owed to the Additional Insureds, and to each other, pursuant to the express and implied terms,
24 conditions and provisions of their respective policies.

25 **WHEREFORE**, Colony prays for judgment as hereinafter set forth.

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PRAYER FOR RELIEF

WHEREFORE, Colony prays for judgment against each Defendant as follows:

1. For equitable contribution from Defendants for their respective equitable and/or proportionate share of all the monetary sums expended by Colony to defend Quality against the claims, allegations, causes of action and/or demands made against Quality in the above referenced Actions, according to proof;

2. For equitable contribution from Defendants for their respective equitable and/or proportionate share of all the monetary sums expended by Colony to indemnify Quality against the claims, allegations, causes of action and/or demands made against Quality in the above referenced Actions, according to proof;

3. For equitable contribution from Defendants for their respective equitable and/or proportionate share of all the monetary sums expended by Colony to defend the Additional Insureds against the claims, allegations, causes of action and/or demands made against the Additional Insureds in the above referenced Actions, according to proof;

4. For a declaration that Defendants have an obligation to defend Quality under each of their respective policies, according to proof;

5. For a declaration that Defendants have an obligation to indemnify Quality under each of their respective policies, according to proof;

6. For a declaration that Defendants have an obligation to defend the Additional Insureds under each of their respective policies, according to proof;

7. For costs of suit and attorneys' fees and costs incurred herein;

8. For an award of prejudgment interest; and

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9. For such other and further relief as this Court deems just and proper.

DATED: December 4, 2017



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